

January 17th, 1743.

ANSWERS for *John Nairn of Greenyards*;

TO the PETITION of *Agnes Kinloch*, Relict of the deceast *Alexander Nairn* of *Drumkilbo*, elder, and *Elisabeth Nairn*, Relict of the deceast *Alexander Nairn* of *Drumkilbo*, younger, and *Anne* and *Jean Nairns*, Daughters of the said deceast *Alexander Nairn* of *Drumkilbo*, elder, and Sisters to *David Nairn* now of *Drumkilbo*.

THE Lands and Estate of *Drumkilbo* were purchased from the late Lord *Balmerino*, by the deceast *Agnes Nairn* Relict of the deceast *William Blair* of *Tarsappie*, the Respondent's Aunt, and the Rights were by her taken to herself in Liferent, and in Fee to the deceast *Alexander Nairn*, the Respondent's elder Brother, therein designed *Alexander Nairn* eldest lawful Son to umquhile Mr. *Alexander Nairn* of *Greenyards*, Advocate, Brother-german to the said *Agnes*, and to the Heirs-male of his Body; which failing, to the Respondent and his Heirs-male; which failing, to certain other Substitutes; reserving Powers to the said *Agnes*, the Purchaser, of selling and disposing of the Estate, in whole or in Part, or burdening it with what Debts she should think proper.

But this Conveyance contains a Tailie, with strict irritant and resolute Clauses, prohibiting the Respondent's elder Brother, and the whole other Heirs of Tailie, from Alienations and contracting of Debt; the only Powers given to them being to provide their Wives with suitable Jointures, not exceeding 1000 *l. Scots*, and to grant Provisions to the younger Children, which are limited by the Tailie to a certain Sum; and that such is the Conception of the Tailie, will not be denied by the Petitioners, who, it is informed, are possess of an Extract thereof, which was duly recorded.

The deceast *Alexander Nairn* of *Drumkilbo*, elder, the first Institute in the Tailie, intermarried with *Agnes Kinloch*, one of the Petitioners, and, by Contract of Marriage, provided her to a Liferent-annuity of 1000 *l. Scots* a-Year, which was a full Exercise of the Faculty in the Tailie of burdening the Estate with Jointures to Wives.

Alexander Nairn of *Drumkilbo* younger, intermarried with *Elisabeth Nairn*, Daughter of Sir *William Nairn* of *Dunsinnan*; but there was no Contract of Marriage, the said *Alexander Nairn* never recieved any Portion, and the said *Elisabeth Nairn* was never provided in any Liferent.

This Marriage dissolv'd by the Decease of the said *Alexander Nairn*, who never was himself infest in the Estate, and left Issue *Robert Nairn* and several younger Children.

Alexander Nairn of *Drumkilbo*, elder, being also deceast, the Succession to the Estate devolved on *Robert Nairn*, the Son of *Drumkilbo* younger, an Infant, who was accordingly served Heir to his Grandfather, the Person who died last in the Fee of the Estate.

The Petitioner *Elisabeth Nairn*, Relict of *Alexander Nairn* of *Drumkilbo*, younger, having applied to your Lordships for an Aliment from her Son the Heir, for herself and younger Children, 1000 Merks was modified to herself, and 500 Merks for her two Daughters, the younger Children.

Robert Nairn the Infant, who was served Heir to *Alexander Nairn* of *Drumkilbo*, elder, his Grandfather, is now also deceast, as are the whole

whole younger Children of the said *Alexander Nairn of Drumkilbo* younger, by which Means the Estate does, by the Tailie, fall and appertain to *David Nairn*, the Respondent's Nephew; and an Application having been made to your Lordships, in Behalf of the Petitioners, for having the Rents sequestrate, and a Factor to be appointed, to be burdened with certain yearly Payments, great Part of which cannot affect the Heir of Tailie, the Respondent apprehended himself concerned, from Regard to his Nephew who is abroad, and as having the next Right to the Succession himself, failing of this Nephew the Heir, and another Nephew who is abroad in *Holland*, to oppose this Application, so far as it might be a Prejudice to the Interest of the absent Heir.

The Respondent has no Objection to make to a Sequestration, as that may be the most probable Method of preserving the Rents until the absent Heir return Home, or give Orders about the Management: But he is persuaded your Lordships will not burden the Factory with annual Payments, to which the Heir of Tailie is not bound to submit.

The Liferent Infeftment to the Petitioner *Agnes Kinloch*, is a Burden affecting the Estate, agreeable to the Tailie; and as the Heirs of Tailie were impowered to grant Provisions to younger Children, and that a Submission was entered into betwixt the deceased *Robert Nairn* the Minor, and *Anne* and *Jean Nairns* the Daughters of the deceased *Alexander Nairn of Drumkilbo* elder, the Petitioners, upon Provisions granted to them by their Father, by which the Sum of 10000 Merks was decreed by Arbiters to the said *Anne* and *Jean Nairns*, and as this is within the Sum with which the Estate may, by the Tailie, be burdened, for Provision to younger Children; this also may be a Burden on the Estate.

But however just it might be, that the Petitioner *Elizabeth Nairn* should have an Aliment from her Son, this can afford no Claim against the other Heirs of Tailie, to whom the Succession is now open; and it is further to be observed, that the whole of her Children are now deceased; that she has brought no Portion to this Family; and, as it will not to be disputed that a Portion of 500 *l. Sterl.* was intended to be paid by Sir *William Nairn* her Father, this does still remain a Fund for the Support of the young Lady.

The Respondent does, by no means, oppose a Sequestration; but he humbly leaves it with your Lordships, if it be not more proper that the Factory shou'd go out, without being burdened with any of the Claims mentioned in the Petition, leaving the Petitioners, so far as their several Claims are real, or can be made real, against the Estate, to affect the Rents by due Course of Law.

But whatever may be your Lordships Resolution as to that, the Respondent is persuaded that the Factory will not be burdened with Payments which can in no Shape affect the absent Heir; and of this Kind he takes to be the 1000 Merks yearly claim'd by the Petitioner *Elizabeth Nairn*, Relict of the deceased *Alexander Nairn of Drumkilbo* younger.

The Respondent begs leave further to suggest to your Lordships, That the Factor who was appointed during the Lifetime of the Infant Heir now deceased, has hitherto, according to the Respondent's Information, rendered no Account of his Intromissions, and if it will not be therefore proper to empower the Factor to be named, to call the former Factor to Account.

In Respect whereof, &c.

CH. MAITLAND.